IN THE HIGH COURT OF JUDICATURE FOR RAJSTHAN AT JAIPUR BENCH, JAIPUR.

S.B. CIVIL SECOND APPEAL NO.868/2007

5.12.2007.

HON'BLE MR. JUSTICE DALIP SINGH

Shri P.S. Sirohi, for the appellant.

This second appeal has been filed against the judgment of the learned lower appellate court dated 14.9.2005 on 18.9.2007.

The office has pointed out the defect that the appeal is barred by limitation having been filed with a delay of 715 days.

The appellant has filed an application under Section 5 of the Limitation Act, 1963. It has been submitted in para 3 of the application that the appellant lost two of his sons who died on 25.3.2004 and 3.3.2005. Both these deaths had occurred more than 6 months prior to the decision of the appeal by the learned lower appellate court.

Thereafter it is submitted that the appellant's wife passed away on 6.10.2006 i.e. after more than an year of passing of the judgment of the learned lower appellate court on 14.9.2005. The delay is sought to be condoned on the ground of the aforesaid three deaths of the members of the family.

So far as the above ground is concerned the court may have sympathy with the appellant but the fact remains that there is no co-relationship between filing of the appeal and the death of the wife of the appellant which occurred after more than an year of the passing of the judgment and when the certified copy of the judgment had already

obtained by the appellant on 5.10.2005 itself and the period of limitation was 90 days for filing the appeal which too expired much prior to the date when the appellant lost his wife. So far as the death of the sons is concerned they died prior to the judgment of the learned lower appellate court as such there is no relevancy of this fact with regard to the condonation of delay on that account. The application under Section 5 of the Limitation Act is consequently dismissed. This second appeal as well as the stay application accordingly are dismissed as barred by limitation.

(DALIP SINGH),J.

Ramchandrkhatri,PS